IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9775 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRADIP THAKORBHAI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9775 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged the detention order dated 16.8.2002 by which he is detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) as a "bootlegger".

#. Along with the detention order, the detenu was served with the grounds of detention. In the said grounds, there is a reference about two criminal cases which are filed under the Bombay Prohibition Act. It is alleged against the petitioner that the petitioner is dealing in illicit liquor. The authority, after having been satisfied about the illegal activities of the petitioner, has detained the petitioner under the preventive detention.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, the petitioner made the representation on 18.9.2002 through his advocate to respondent No.1 by way of registered post A.D. By way of the said representation, he demanded the statements recorded by the police under Section 161 of the Criminal Procedure Code as well as some other documents in the nature of the statements of co-accused recorded by the police. By the said representation the petitioner also demanded the bail orders of co-accused, Manohar @ Manu Bherulal Hiralal Jain, Siddiq Gulamrasul Sheikh, Narendra @ Bablu Bhojumal Sindhi, Pappu Sindhi Punam Sharma, Ramesh @ Bhim, Sajid, Raju Rupchand Gendi, Chetan etc. who are co-accused in CR No.743 of 2001. It is not in dispute that the said statements have not been given to the petitioner, but the detaining authority took the stand that whatever documents relied upon in passing the detention order are given to the petitioner. For that purpose, learned advocate has relied upon the decision of this Court (Coram: K.R.Vyas,J) given in Special Civil Application No.3661 of 1996 wherein it is observed as under.:

> ".....Having perused the grounds of detention and other documents supplied to the detenu, it appears that in Criminal Case No.157/95 registered before Limbayat Police Station, the detenu along with other co-accused filed bail applications. The bail application filed by the detenu was registered as Miscellaneous Criminal Applications Nos.37/96 and the bail applications filed by the other co-accused were registered as Miscellaneous Criminal Applications Nos.91/96, 93/96 and 94/96. It further appears that the learned Second Joint Sessions Judge, Surat

released three other co-accused on bail. Relying on that order, the learned Additional Sessions Judge granted all the aforesaid Miscellaneous Criminal Applications on 21.1.96, meaning thereby the detenu as well as the other co-accused were also released on bail. Mr.Dave, learned Advocate for the petitioner, therefore, made a grievance that the applications of the co-accused and the bail orders passed by the competent Court thereon releasing the co-accused on bail being relevant material, the copies thereof ought to have been supplied to the detenu. There is substance in what Mr.Dave urged. The bail applications as well as the bail orders passed in favour of the co-accused are relevant documents and, therefore, copies thereof ought to have been supplied to the detenu. The non-supply of the copies thereof has adversely affected the right of the detenu of making an effective representation against his detention guaranteed under Article 22(5) of the Constitution of India. The Supreme Court in State of U.P. vs. Kamal Kishor Saini, 1988 (1) SCC, 287 has held that bail application filed by the co-accused and the order passed thereon constitute relevant material, which was required to be produced before the detaining authority and the detaining authority was required to apply its mind to such relevant material. When such a relevant material is withheld from the detaining authority, the Apex Court held that the satisfaction of the detaining authority is vitiated inasmuch as the relevant material is kept back from the detaining authority and, therefore, its subjective satisfaction is vitiated. In the instant case also, it is not in dispute before this Court that the copies of the bail applications of the co-accused were not supplied to the detenu, nor were placed before the detaining authority. In view of this infirmity, the continued detention of the detenu is required to be held illegal and the detenu is required to be released forthwith by quashing and setting aside his continued detention....."

#. In the instant case, the criminal case is registered against the petitioner and other co-accused. It is an admitted fact that the bail applications and orders below such applications of the co-accused were not given to the petitioner nor the same are placed before the detaining authority at the time when the detention order is passed.

Since this fact is not in dispute and in view of the judgment referred to above, there is no option but to release the petitioner from the detention. However, the detaining authority is of the opinion that these documents are not considered by the detaining authority at the time of passing the detention order, and, therefore, it is not necessary to give those documents. That may be so, but in view of the judgment referred to above, at least, those documents are required to be placed before the detaining authority.

#. In view of what is stated above, this petition is allowed. The order of detention dated 16.8.2002 is quashed and set aside. The detenu Pradip Thakorbhai Thakkar is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)